

United States Court
Southern District of Texas
FILED

AUG 22 2003

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

Civil Action No. H-01-3624
(Consolidated)

CLASS ACTION

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

DECLARATION OF HELEN J. HODGES IN SUPPORT OF LEAD
PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

1628

I, Helen J. Hodges, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a member of the law firm of Milberg Weiss Bershad Hynes & Lerach LLP. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. A dispute has arisen among the parties concerning the scope of class certification deposition testimony due to a Rule 30(b)(6) notice of deposition served on August 18, 2003 by defendant Mark A. Frevert. In an effort to resolve the dispute, the parties have conferred in writing.

3. On August 18, 2003, The Regents was served with Frevert's Rule 30(b)(6) deposition notice seeking testimony on six topics. *See Ex. A.*

4. On August 19, 2003, Deborah J. Jeffrey, counsel for defendant Lou L. Pai, wrote to me stating "the defendants cannot prepare adequately" for The Regents' deposition purportedly because documents responsive to Pai's July 2, 2003 document production request concerning a 1998 energy contract had yet to be produced. Ms. Jeffrey indicated The Regents' deposition may need to be postponed. *See Ex. B.*

5. On August 19, 2003, I wrote to Ms. Jeffrey, stating The Regents' 30(b)(6) designee, Mr. Jeffrey Heil, would provide testimony concerning The Regents' decision to purchase Enron securities. I also stated Mr. Heil never was designated a person most knowledgeable concerning other topics. I informed Ms. Jeffrey the Office of the Treasurer had no responsive documents concerning the energy contract. I further informed Ms. Jeffrey that defense counsel had relevant documents for Mr. Heil's deposition for months and thus the deposition of Mr. Heil should go forward on August 25, 2003, as previously agreed by the parties. *See Ex. C.*

6. On August 19, 2003, I wrote to JC Nickens, attorney for defendant Frevert, regarding his deposition notice. *See Ex. D.* I informed Mr. Nickens that in accordance with the deposition schedule negotiated with defense counsel, The Regents would produce Mr. Heil for deposition on August 25, 2003 to testify in accordance with the Court's March 28, 2003 Order (Ex. F), but no one else from The Regents would appear on August 25, 2003 to testify on other topics.

7. On August 20, 2003, Mr. Nickens and Ms. Jeffrey wrote to me, stating that they opposed Lead Plaintiff's intended motion for protective order. Mr. Nickens and Ms. Jeffrey stated they believe the proposed 30(b)(6) topics are appropriate class certification discovery. Mr. Nickens and Ms. Jeffrey also indicated that they understood the Court's Order "to mean that there is one 30(b)(6) deposition per institutional plaintiff, but we do not understand her Order to preclude the taking of a complete 30(b)(6) deposition on all class certification issues." Mr. Nickens and Ms. Jeffrey also stated the issue "bring[s] into question the wisdom of proceeding on August 25 " See Ex. G.

8. On August 20, 2003, I wrote to Ms. Jeffrey and Mr. Nickens to express my concern about postponing the agreed on deposition of Mr. Heil. I further informed them Lead Counsel would agree to allow defendants to question Mr. Heil concerning the six topics, but Mr. Heil would not be designated for all the topics. See Ex. H.

9. On August 21, 2003, Mr. Nickens wrote to me, stating he agreed to proceed with Mr. Heil's deposition on August 25, 2003. Mr. Nickens stated Frevert's 30(b)(6) notice stands. See Ex. I.

10. On August 21, 2003, I wrote to Mr. Nickens and informed him that with respect to the 30(b)(6) notice, Frevert's topics four through six were vague, ambiguous and nonsensical. To the extent Lead Plaintiff and Lead Counsel can make sense of the topics, I informed Mr. Nickens that Mr. Heil was the person who could testify on the topics. I proceeded to explain what I view as the deficiencies of topics four through six See Ex. J.

11. The parties have been unable to reach agreement concerning the scope of the 30(b)(6) deposition of The Regents.

12. Attached are true and correct copies of the following exhibits:

Exhibit A: Mark A. Frevert's Notice of deposition of The Regents;

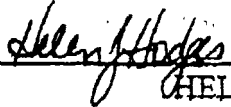
Exhibit B: Letter from Deborah Jeffrey to Helen Hodges, dated August 19, 2003;

Exhibit C: Letter from Helen Hodges to Deborah Jeffrey, dated August 19, 2003;

Exhibit D: Letter from Helen Hodges to Jacks C. Nickens, dated August 19, 2003;

- Exhibit E: Complaint filed on March 19, 2001 in *The Regents of the University of California v. Enron Energy Services, Inc.*, No. 01-1006 (N.D. Cal.);
- Exhibit F: *Newby v. Enron*, No. 01-3624, Order (S.D. Tex. Mar. 28, 2003);
- Exhibit G: Letter from Jacks C. Nickens and Deborah Jeffrey to Helen Hodges, dated August 20, 2003;
- Exhibit H: Letter from Helen Hodges to Jacks C. Nickens and Deborah Jeffrey, dated August 20, 2003;
- Exhibit I: Letter from Jacks C. Nickens to Helen Hodges, dated August 21, 2003;
- Exhibit J: Letter from Helen Hodges to Jacks C. Nickens, dated August 21, 2003; and
- Exhibit K: Hearing Transcript dated March 27, 2003

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct. Executed this 22nd day of August 2003 at San Diego, California.

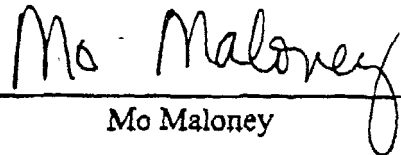

HELEN J. HODGES

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECLARATION OF HELEN J. HODGES IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR PROTECTIVE ORDER document has been served by sending a copy via electronic mail to serve@ESL3624.com on this 22nd day of August, 2003.

I further certify that a copy of the foregoing DECLARATION OF HELEN J. HODGES IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR PROTECTIVE ORDER document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 22nd day of August 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004


Mo Maloney

The Exhibit(s) May
Be Viewed in the
Office of the Clerk